

Subparagraph II.G of this Order. If Volunteer elects not to develop a Work Plan under this Subparagraph or either party concludes that a mutually acceptable Work Plan under this Subparagraph cannot be negotiated, then this Order shall terminate in accordance with Paragraph XII.

G. Notice of Proposed Work Plan for the Site's Remediation

Whenever a Work Plan for the Site's remediation (other than an IRM Work Plan) is proposed, the Department will publish a notice in the Environmental Notice Bulletin to inform the public of the opportunity to submit comments on the proposed Work Plan within 30 Days after the date of the issue in which the notice appears. The Department shall mail an equivalent notice to the City of New York. The Department will notify Volunteer following the close of the public comment period whether the proposed Work Plan needs to be revised. If the Department determines that revisions are necessary to protect human health or the environment for the Contemplated Use, Volunteer agrees to negotiate revisions to the proposed Work Plan in accordance with Paragraph II.C. If the Department determines that no revisions are required, then the Work Plan shall be attached hereto as Exhibit "B."

H. Release and Covenant Not to Sue

Upon the Department's determination that i) it is satisfied with the implementation of the Order; ii) no remedial activities other than those conducted at the Site, if any, are necessary for the Contemplated Use to proceed with protection of human health and the environment; and iii) Volunteer has complied, if required, with Paragraph X, the Department shall provide Volunteer with a Release and Covenant Not to Sue which is substantially similar to the one attached hereto as Exhibit "C," subject to the terms and conditions stated therein.

III. Progress Reports

Volunteer shall submit written monthly progress reports to the parties identified in Subparagraph XI.A.1. by the 10th day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination Date. Such reports shall, at a minimum, include: all actions taken pursuant to this Order during the previous month and those anticipated for the next month; all results of sampling and tests and all other data received or generated by Volunteer or Volunteer's contractors or agents, whether under this Order or otherwise, in the previous month, including quality assurance/quality control information; and information regarding percentage of completion, unresolved delays encountered or anticipated that may affect the future schedule, and efforts made to mitigate such delays.

IV. Enforcement

This Order shall be enforceable as an order under the laws of the State of New York. Volunteer shall not suffer any penalty or be subject to any proceeding or action if it cannot comply with any requirement of this Order as a result of a Force Majeure Event provided it notifies the Department in writing within 10 business days of when it obtains knowledge of any

such event. Volunteer shall include in such notice the measures taken and to be taken to prevent or minimize any delays and shall request an appropriate extension or modification of this Order. Volunteer shall have the burden of proving by a preponderance of the evidence that an event qualifies as a defense to compliance pursuant to this Paragraph.

V. Entry upon Site

Volunteer hereby consents, upon reasonable notice under the circumstances presented, to entry upon the Site or areas in the vicinity of the Site which may be under the control of Volunteer, by any duly designated officer or employee of the Department or any State agency having jurisdiction with respect to the matters addressed in a Department-approved Work Plan, and any agent, consultant, contractor or other person so authorized by the Commissioner, all of whom shall abide by the health and safety rules in effect for the Site. Upon request, Volunteer shall permit the Department full access to all non-privileged records relating to matters addressed by this Order and to job meetings. Raw data is not considered privileged and that portion of any privileged document containing raw data must still be provided to the Department.

VI. Payment of State Costs

Within 30 Days after receipt of an itemized invoice from the Department, Volunteer shall pay to the Department a sum of money which shall represent reimbursement for the State's expenses for work performed at or in connection with the Site prior to the effective date of this Order, as well as for negotiating this Order and all costs associated with this Order, but not including any expenses incurred by the State after the Termination Date. Each such payment shall be made by certified check payable to the Department of Environmental Conservation and shall be sent to: Bureau of Program Management, Division of Environmental Remediation, New York State Department of Environmental Conservation, 50 Wolf Road, Albany, NY 12233-7010.

Personal service costs shall be documented by reports of Direct Personal Service, which shall identify the employee name, title, biweekly salary, and time spent (in hours) on the project during the billing period, as identified by an assigned time and activity code. Non-personal service costs shall be summarized by category of expense (e.g., supplies, materials, travel, contractual) and shall be documented by expenditure reports.

VII. Reservation of Rights

A. Except as provided in the Release and Covenant Not to Sue (Exhibit "C") after its issuance, nothing contained in this Order shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's or the Trustee's rights including, but not limited to, the right to recover natural resource damages, the right to take any investigatory or remedial action deemed necessary, and the right to exercise summary abatement powers with respect to any party, including Volunteer.

B. Except as otherwise provided in this Order, Volunteer specifically reserves all defenses under applicable law respecting any Departmental assertion of remedial liability against

Volunteer, and further reserves all rights respecting the enforcement of this Order, including the rights to notice, to be heard, to appeal, and to any other due process. The existence of this Order or Volunteer's compliance with it shall not be construed as an admission of liability, fault or wrongdoing by Volunteer, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

C. Except as provided in Subparagraph XIV.M, Volunteer reserves such rights as it may have to seek and obtain contribution and/or indemnification from its insurers and from other potentially responsible parties or their insurers for past or future response/cleanup costs or such other costs or damages arising from the contamination at the Site as provided under applicable State and federal law.

#### VIII. Indemnification

Volunteer shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless for all claims, suits, actions, damages, and costs of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Order prior to the Termination Date except for liability arising from willful, wanton or malicious acts or acts constituting gross negligence by the Department, the State of New York, and/or their representatives and employees during the course of any activities conducted pursuant to this Order.

#### IX. Notice of Sale or Conveyance

A. Within 30 Days after the effective date of this Order, Volunteer shall cause to be filed the Notice of Order, which is attached to this Order as Exhibit "D," with the County Clerk in the county in which the Site is located and provide evidence of such filing to the Department. Volunteer may terminate such Notice on or after the Termination Date.

B. If Volunteer proposes to convey the whole or any part of Volunteer's ownership interest in the Site, Volunteer shall, not fewer than 60 Days before the date of conveyance, notify the Department in writing of the identity of the transferee and of the nature and proposed date of the conveyance and shall notify the transferee in writing, with a copy to the Department, of the applicability of this Order. However, such obligation shall not extend to the granting of any rights under any mortgage, deed, trust, assignment, judgment, lien, pledge, security agreement, lease or any other right accruing to a person to secure the repayment of money or the performance of a duty or obligation by a person not affiliated with Volunteer.

#### X. Deed Restriction

Within 60 Days of the Department's approval of a Remediation Work Plan which relies upon institutional controls, Volunteer shall, unless otherwise authorized by the Department in writing, cause to be recorded a Department-approved instrument to run with the land with the County Clerk in the county in which the Site is located which is substantially similar to Exhibit

"E" attached to this Order, and shall provide the Department with a copy of such instrument certified by such County Clerk to be a true and faithful copy. The Volunteer may petition the Department to terminate the deed restriction filed pursuant to this Paragraph when the Site is protective of human health and the environment for residential uses without reliance upon the restrictions set forth in such instrument. The Department will not unreasonably withhold its approval of such petition.

XI. Communications

A. All written communications required by this Order shall be transmitted by United States Postal Service, by private courier service, or hand delivered.

1. Communication from shall be sent to:

Thomas Gibbons, P.E.  
DER  
N.Y.S. Department of Environmental Conservation  
50 Wolf Road  
Albany, New York 12233  
Note: four copies (one unbound) of work plans are required to be sent.

Kevin Carpenter, Central Office VCP Coordinator  
DER  
N.Y.S. Department of Environmental Conservation  
50 Wolf Road  
Albany, New York 12233

Richard Gardineer  
Region 2 Office  
N.Y.S. Department of Environmental Conservation  
One Hunter's Point Plaza  
47-40, 21<sup>st</sup> Street  
Long Island City, N.Y. 11101-5407

Gary Litwin  
Bureau of Environmental Exposure Investigation  
New York State Department of Health  
Flanigan Square  
547 River Street  
Troy, New York 12180-2216  
Note: two copies of work plans are required to be sent, and

Michael J. Lesser, Esq.  
DEE  
N.Y.S. Department of Environmental Conservation

50 Wolf Road  
Albany, New York 12233

2. Communication from the Department to Volunteer shall be sent to:

For TRC:

Robert O. Harris, M.P.H.  
Senior TRC Vice President  
1200 Wall Street West 2<sup>nd</sup> Fl.  
Lyndhurst, N.J. 07071

Gail S. Port, Esq.  
Proskauer Rose LLP  
1585 Broadway  
New York, N.Y. 10036-8299, and,

For FSM:

Susan E. Fine, Esq.  
Executive Vice President  
FSM East River Associates LLC  
299 Park Avenue  
42<sup>nd</sup> Floor  
New York, N.Y. 10171, and,

Martin L. Edelman, Esq.  
Paul, Hastings, Janofsky & Walker LLP  
75 East 55<sup>th</sup> Street  
New York, N.Y. 10022

B. The Department and Volunteer reserve the right to designate additional or different addressees for communication on written notice to the other.

XII. Termination of Order

Either party may elect to terminate this Order, in which event this Order shall terminate effective the 5th Day after the written notification terminating this Order, except that such termination shall not affect the provisions contained in Paragraphs IV, VI and VIII and in Subparagraph XIV.M, nor Volunteer's obligation to ensure that it does not leave the Site in a condition, from the perspective of human health and environmental protection, worse than that which prevailed before any activities were commenced under this Order, which provisions and obligation shall survive the termination of this Order.



### XIII. Dispute Resolution

Volunteer may commence dispute resolution within 20 Days of Volunteer's receipt of the Department's notice of disapproval of a submittal or proposed Work Plan, disapproval of a final report, or termination of this Order pursuant to Subparagraph XIV.A.2. Disputes regarding Work Plan development and revision shall be heard by the Bureau Director of the Division of Environmental Remediation's remedial bureau within which the Site is located. All other disputes subject to dispute resolution shall be heard by the Assistant Division Director of the Division of Environmental Remediation. Volunteer shall serve upon the Department a request for dispute resolution and a written statement of the issues in dispute, the relevant facts upon which the dispute is based, factual data, analysis or opinion supporting its position, and all supporting documentation upon which Volunteer relies (hereinafter called the "Statement of Position"). The Department shall serve its Statement of Position no later than 20 Days after receipt of Volunteer's Statement of Position. Volunteer shall have the burden of proving that the Department's position should not prevail. A meeting or telephone conference can be scheduled if it will promote a resolution of the issues. A final decision resolving the dispute will be issued timely. The final decision shall constitute a final agency action and Volunteer shall have the right to seek judicial review of the decision pursuant to Article 78 of the CPLR if Volunteer commences such proceeding no later than 30 Days after receipt of a copy of the decision. The invocation of dispute resolution shall not extend, postpone or modify Volunteer's obligations under this Order with respect to any item not in dispute unless or until the Department agrees or a court determines otherwise. The Department shall keep an administrative record which shall be available consistent with Article 6 of the Public Officers Law.

### XIV. Miscellaneous

A. 1. Volunteer hereby certifies that all information known to Volunteer and all information in the possession or control of Volunteer and its agents which relates in any way to the contamination existing at the Site on the effective date of this Order, and to any past or potential future release of hazardous substances, pollutants, or contaminants at or from the Site, and to its application for this Order, has been fully and accurately disclosed to the Department.

2. If the information provided and certifications made by Volunteer are not materially accurate and complete, this Order, except with respect to the provisions of Paragraphs IV, VI and VIII and Subparagraph XIV.M, at the sole discretion of the Department, and shall be null and void *ab initio* 15 Days after the Department's notification of such inaccuracy or incompleteness and the Department shall reserve all rights that it may have, unless, however, Volunteer submits information within that 15 Day time period indicating that the information provided and the certifications made were materially accurate and complete.

C. Each party shall have the right to take samples and to obtain split samples, duplicate samples, or both, of all substances and materials sampled by the other party.

D. Volunteer shall allow the Department to attend and shall notify the Department at least 5 business days in advance of any field activities to be conducted pursuant to this Order as

well as any prebid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting.

E. Volunteer shall obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform Volunteer's obligations under this Order, except that the Department may exempt Volunteer from the requirement to obtain any permit issued by the Department for any activity that is conducted on the Site and that the Department determines satisfies all substantive technical requirements applicable to like activity conducted pursuant to a permit.

F. Volunteer shall not be considered an operator of the Site solely by virtue of having executed and/or implemented this Order.

G. Volunteer shall provide a copy of this Order to each contractor and subcontractor hired to perform work required by this Order and to each person representing Volunteer with respect to the Site and shall condition all contracts entered into in order to carry out the obligations identified in this Order upon performance in conformity with the terms of this Order.

H. The paragraph headings set forth in this Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Order.

I. 1. The terms of this Order shall constitute the complete and entire Order between the Department and Volunteer concerning the implementation of the work plan(s) attached to this Order. No term, condition, understanding or agreement purporting to modify or vary any term of this Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving Volunteer of Volunteer's obligation to obtain such formal approvals as may be required by this Order. In the event of a conflict between the terms of this Order and any Work Plan submitted pursuant to this Order, the terms of this Order shall control over the terms of the Work Plan(s) attached as Exhibit "B." Volunteer consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Order.

2. If Volunteer desires that any provision of this Order be changed, Volunteer shall make timely written application to the Commissioner with copies to the parties listed in Subparagraph XI.A and the Commissioner or his designee shall timely respond. This Subparagraph shall not extend to revisions to any Work Plan.

J. The activities to be undertaken under the terms of this Order are not subject to review under the State Environmental Quality Review Act, ECL Article 8, and its implementing regulations.

K. If there are multiple parties, the term "Volunteer" shall be read in the plural where required to give meaning to this Order. Further, the obligations of the Volunteers under this

Order are joint and several and the "bankruptcy" or inability to continue by any Volunteer shall not affect the obligations of the remaining Volunteer(s) to carry out the obligations under this Order.

L. Except as provided in Subparagraph XIV.M., and to the extent authorized under 42 U.S.C. Section 9613 and any other applicable law, Volunteer shall not be liable for any claim, now or in the future, in the nature of contribution by potentially responsible parties concerning the alleged contamination which is the subject matter of this Order. In any future action brought by Volunteer against a potentially responsible party under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the provisions of 42 U.S.C. Section 9613(f)(3) shall apply.

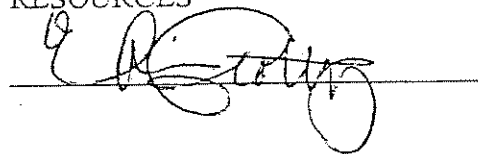
M. Volunteer and its employees, servants, agents, lessees, sublessees, successors, and assigns hereby waive any right to pursue reimbursement of monies expended by Volunteer prior to the Termination Date as against the State or the Spill Fund, and agree to indemnify and hold harmless the Spill Fund from any and all legal or equitable claims, suits, causes of action, or demands whatsoever with respect to the Site that any of same has or may have as a result of Volunteer's entering into or fulfilling the terms of this Order with respect to the Site.

N. Volunteer, Volunteer's lessees, sublessees, successors, and assigns shall be bound by this Order. Any change in ownership of Volunteer including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Volunteer's responsibilities under this Order. Volunteer's successors and assigns shall provide to the Department a certification that they agree to be bound by this Order within 30 Days of becoming a successor or assign.

O. The effective date of this Order shall be the date it is signed by the Commissioner or his designee.

DATED: June 27, 2001

ERIN M. CROTTY, COMMISSIONER  
NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION AND  
TRUSTEE OF THE STATE'S NATURAL  
RESOURCES





## CONSENT BY RESPONDENT TRC

Volunteer hereby consents to the issuing and entering of this Order, waives Volunteer's right to a hearing herein as provided by law, and agrees to be bound by this Order.

TRC Companies, Inc.

By: *Michael Salmon*

Michael Salmon

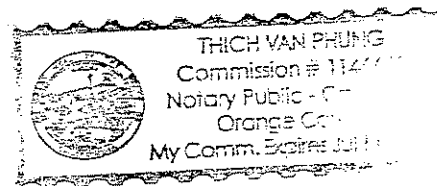
Title: Senior Vice President

Date: May 25, 2001

California  
STATE OF ~~NEW YORK~~ )  
 ) s.s.:  
COUNTY OF Orange )

On the 25<sup>th</sup> day of May, in the year 2001, before me, the undersigned, personally appeared Michael Salmon, personally known to me ~~or proved to me on the basis of satisfactory evidence~~ to be the individual(~~s~~) whose name is (~~are~~) subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ capacity(~~ies~~), and that by his/~~her/their~~ signature(~~s~~) on the instrument, the individual(~~s~~), or the person upon behalf of which the individual(~~s~~) acted, executed the instrument.

*Thich Van Phung*  
Signature and Office of individual  
taking acknowledgment



## CONSENT BY RESPONDENT FSM

Volunteer hereby consents to the issuing and entering of this Order, waives Volunteer's right to a hearing herein as provided by law, and agrees to be bound by this Order.

FSM EAST RIVER ASSOCIATES LLC

By: Susan FineTitle: Executive Vice PresidentDate: May 29, 2001

STATE OF NEW YORK )  
 ) s.s.:  
COUNTY OF NEW YORK

On the 29th day of May, in the year 2001, before me, the undersigned, personally appeared Susan Fine, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Cheryl Bloom  
Signature and Office of individual  
taking acknowledgment

CHERYL BLOOM  
Notary Public, State of New York  
No. 31-4755382  
Qualified in New York County  
Commission Expires 4/30/2002

EXHIBIT "A"

Map of Site

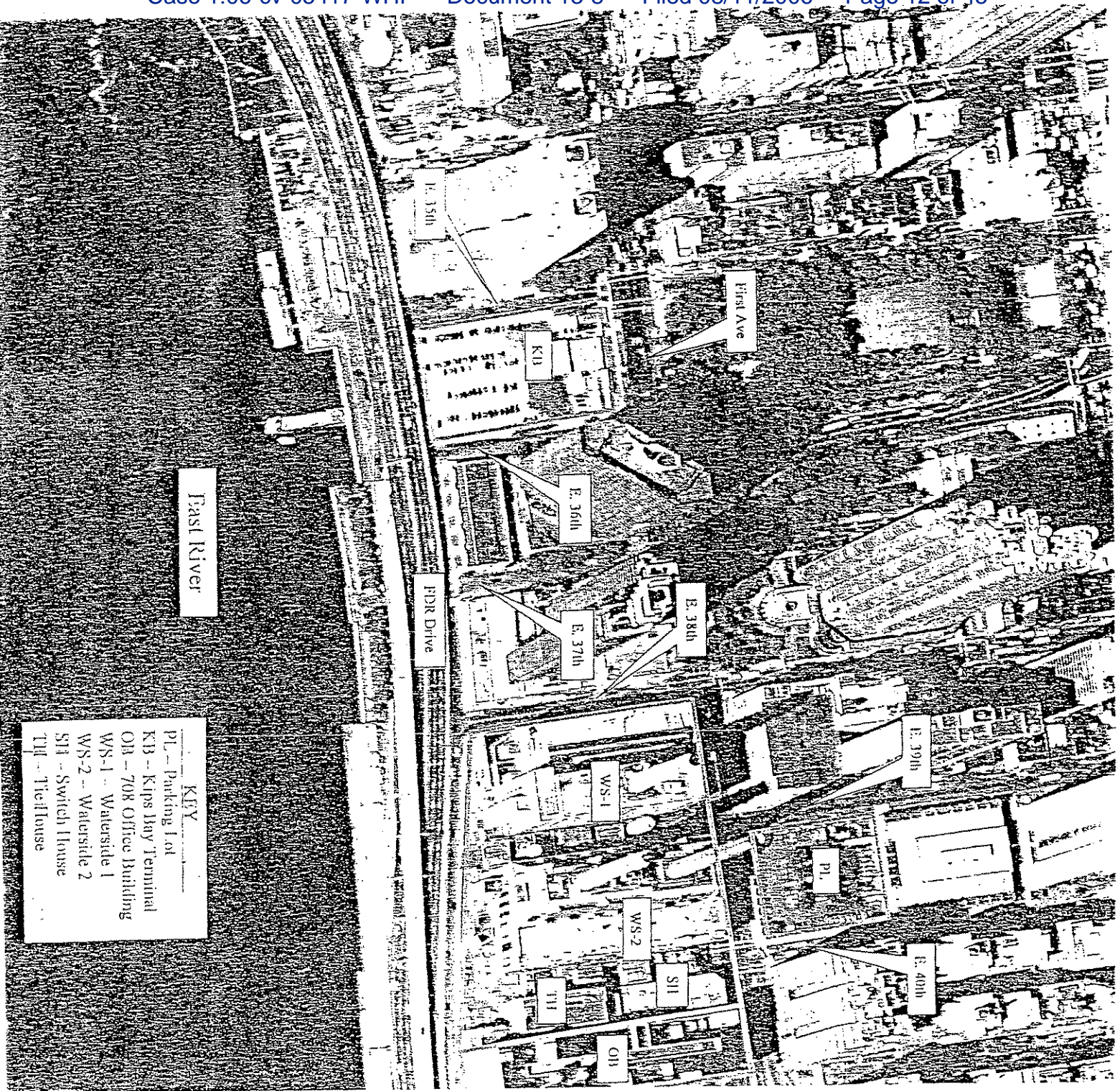


EXHIBIT "B"

Department-Approved Work Plan(s)



**EXHIBIT "C"**  
**Release and Covenant Not to Sue**

Unless otherwise specified in this letter, all terms used in this letter shall have the meaning assigned to them under the terms of the Voluntary Order entered into between the New York State Department of Environmental Conservation (the "Department") and \_\_\_\_\_ ("Volunteer"), Index No. \_\_\_\_\_ (the "Order").

The Department is pleased to report that the Department is satisfied that the Order's Work Plan(s) relative to the Site, located at \_\_\_\_\_ has been successfully implemented.

The Department and the Trustee of New York State's natural resources ("Trustee"), therefore, hereby release, covenant not to sue, and shall forbear from bringing any action, proceeding, or suit against Volunteer and Volunteer's lessees and sublessees, successors and assigns, and their respective secured creditors, for the further investigation and remediation of the Site, and for natural resource damages based upon the release or threatened release of Covered Contamination, provided that (a) timely payments of the amounts specified in Paragraph VI of the Order continue to be or have been made to the Department, (b) appropriate deed restrictions remain recorded in accordance with Paragraph X of the Order, and (c) Volunteer and/or its lessees, sublessees, successors, or assigns promptly commence and diligently pursue to completion the Work Plan providing for OM&M, if any. Nonetheless, the Department and the Trustee hereby reserve all of their respective rights concerning, and such release, covenant not to sue, and forbearance shall not extend to any further investigation or remedial action the Department deems necessary:

- due to off-Site migration of petroleum;
- due to environmental conditions or information related to the Site which were unknown at the time this Release and Covenant not to Sue was issued and which indicate that the Contemplated Use cannot be implemented with sufficient protection of human health and the environment;
- due to Volunteer's failure to implement the Order to the Department's satisfaction; or
- due to fraud committed by Volunteer in entering into or implementing this Order.

Additionally, the Department and the Trustee hereby reserve all of their respective rights concerning, and any such release, covenant not to sue, and forbearance shall not extend to Volunteer nor to any of Volunteer's lessees, sublessees, successors, or assigns who cause or allow a release or threat of release at the Site of any hazardous substance (as that term is defined at 42 USC 9601[14]) or petroleum (as that term is defined in Navigation Law § 172[15]), other than Covered Contamination; or cause or allow the use of the Site to change from the Contemplated Use to one requiring a lower level of residual contamination before that use can be implemented with sufficient protection of human health and the environment; nor to any of

Volunteer's lessees, sublessees, successors, or assigns who is otherwise a party responsible under law for the remediation of the Existing Contamination independent of any obligation that party may have respecting same resulting solely from the Order's execution.

Notwithstanding the above, however, with respect to any claim or cause of action asserted by the Department or the Trustee the one seeking the benefit of this release, covenant not to sue, and forbearance shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Covered Contamination.

Notwithstanding any other provision in this release, covenant not to sue, and forbearance,

- if with respect to the Site there exists or may exist a claim of any kind or nature on the part of the New York State Environmental Protection and Spill Compensation Fund against any party, nothing in this letter shall be construed or deemed to preclude the State of New York from recovering such claim.
- except as provided in this letter and in Order, nothing contained in the Order or in this letter shall be construed as barring, diminishing, adjudicating, or in any way affecting any of the Department's or the Trustee's rights (including, but not limited to, the right to recover natural resources damages) with respect to any party, including Volunteer.
- nothing contained in this letter shall prejudice any rights of the Department or the Trustee to take any investigatory or remedial action it deems necessary if Volunteer fails to comply with the Order or if contamination other than Existing Contamination is encountered at the Site.
- nothing contained in this letter shall be construed to prohibit the Commissioner or his duly authorized representative from exercising any summary abatement powers.
- nothing contained in this letter shall be construed to affect the Department's right to terminate the Order under the terms of the Order at any time during its implementation if Volunteer fails to comply substantially with the Order's terms and conditions.

In conclusion, the Department is pleased to be part of this effort to return the Site to productive use of benefit to the entire community.

NEW YORK STATE DEPARTMENT OF  
ENVIRONMENTAL CONSERVATION AND  
TRUSTEE OF THE NEW YORK STATE'S NATURAL  
RESOURCES

By: \_\_\_\_\_

Appendix "A"

(to Exhibit "C")

Map of the Site

## Exhibit "D"

## NOTICE OF ORDER

This Notice is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2001 by \_\_\_\_\_ regarding a parcel of real property located at \_\_\_\_\_ bearing Tax Map Number \_\_\_\_\_ (the "Property"); and

WHEREAS, \_\_\_\_\_ ("Volunteer"), entered into an Order with the Department, Index # \_\_\_\_\_ (the "Order"), concerning the remediation of contamination present on the Property, which Order was signed by the Commissioner of Environmental Conservation on \_\_\_\_\_; and

WHEREAS, in return for the remediation of the Property pursuant to the Order to the satisfaction of the Department, the Department will provide Volunteer and its lessees and sublessees, successors and assigns, including their respective secured creditors, with a release, covenant not to sue, and forbearance from bringing any action, proceeding, or suit related to the Site's further investigation or remediation, subject to certain reservations set forth in the Order; and

WHEREAS, pursuant to the Order, Volunteer agreed to give notice of the Order to all parties who may acquire any interest in the Property by filing this Notice with the \_\_\_\_\_ County Clerk,

NOW, THEREFORE, Volunteer, for itself and for its successors and assigns, declares that:

1. This Notice of the Order is hereby given to all parties who may acquire any interest in the Property; and

2. This Notice shall terminate upon the filing by Volunteer, or its successors and assigns, of a termination of notice of Order after having first received approval to do so from the New York State Department of Environmental Conservation or having terminated the Order pursuant to its Paragraph XII.

IN WITNESS WHEREOF, Volunteer has executed this Notice of Order by its duly authorized representative.

Dated:

By: \_\_\_\_\_

STATE OF NEW YORK

)

) ss:

COUNTY OF

)

On the \_\_\_\_\_ day of \_\_\_\_\_, in the year 2001, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

\_\_\_\_\_  
Signature and Office of individual  
taking acknowledgment



Appendix "A"

(to Exhibit "D")

Map of the Property

Exhibit "E"

DEED RESTRICTION

shall prohibit the Site from ever being used for purposes other than for the Contemplated Use without the express written waiver of such prohibition by the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department;

shall prohibit the use of the groundwater underlying the Site without treatment rendering it safe for drinking water or industrial purposes, as appropriate, unless the user first obtains permission to do so from the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department;

shall require Volunteer and Volunteer's successors and assigns to continue in full force and effect any institutional and engineering controls the Department requires Volunteer to put into place and maintain; and

shall provide that Volunteer, on behalf of itself and its successors and assigns, hereby consents to the enforcement by the Department, or if at such time the Department shall no longer exist, any New York State department, bureau, or other entity replacing the Department, of the prohibitions and restrictions that this Paragraph X requires to be recorded, and hereby covenants not to contest such enforcement.

### Glossary of Terms

The following terms shall have the following meanings:

"ALJ": Administrative Law Judge

"Covered Contamination": the concentrations of Existing Contamination remaining on the Site on the date that the Department issues the Release set forth in Exhibit "C."

"ECL": the Environmental Conservation Law.

"Force Majeure Event": an event which is brought on as a result of fire, lightning, earthquake, flood, adverse weather conditions, strike, shortages of labor and materials, war, riot, obstruction or interference by adjoining landowners, or any other fact or circumstance beyond Volunteer's reasonable control.

"Day": a calendar day unless otherwise specified.

"Department": the New York State Department of Environmental Conservation.

"IRM": an interim remedial measure which is a discrete set of activities which can be undertaken without extensive investigation and evaluation to prevent, mitigate, or remedy environmental damage or the consequences of environmental damage attributable to a Site.

"NL": the Navigation Law

"OM&M WORK Plan": the Department-approved work plan detailing post-remedial operation, maintenance, and monitoring at the Site that Volunteer shall implement.

"Professional engineer": an individual registered as a professional engineer in accordance with Article 145 of the New York State Education Law. If such individual is a member of a firm, that firm must be authorized to offer professional engineering services in the State of New York in accordance with Article 145 of the New York State Education Law.

"Spill Fund": the New York State Environmental Protection and Spill Compensation Fund

"State Costs": all the State's expenses including, but not limited to, direct labor, fringe benefits, indirect costs, travel, analytical costs, and contractor costs incurred by the State of New York for negotiating, implementing, and administering this Order. Approved agency fringe benefit and indirect cost rates will be applied.

"Termination Date": the date upon which (i) the Release (Exhibit "C") is issued or the Department approves the final report relative to the OM&M at the Site, whichever is later; or (ii) the Order terminates pursuant to Paragraph XII. or Subparagraph XIV.A.2.

"Trustee": the Trustee of New York State's natural resources.

"Work Plan": a Department-approved work plan, as may be modified, pertaining to the Site that Volunteer shall implement and that is attached to this Order.

## **Attachment H**

### **Site's Environmental History**

## ATTACHMENT H

SITE'S ENVIRONMENTAL HISTORY

## 1. ENVIRONMENTAL DATA:

Please refer to the following principal environmental reports and plans previously submitted to NYSDEC in accordance with the Voluntary Cleanup Program application and under the VCO:

## a. 685 First Avenue - Parking Lot - VCP Site Number V-00-429-2

1. *Phase I Environmental Site Assessment*, 40<sup>th</sup> Street and First Avenue Property, Foster Wheeler Environmental Corporation, September 1998.
2. *Underground Storage Tank Closure Report*, East 40<sup>th</sup> Street, Manhattan, New York, December 1998.
3. *Investigation Report, 39<sup>th</sup> Street Parking Lot*, New York, New York, Roy F. Weston, Inc., June 1999.
4. *UST Closure & Soil Remediation Summary*, East 39<sup>th</sup> Street Parking Lot, Con Edison, January 18, 2000.
5. *Site Investigation Report*, First Avenue & 39<sup>th</sup> Street, Manhattan, New York, Jacques Whitford, June, 2000.
6. *Well Gauging Monitoring Report*, Table 1: First Avenue & 39<sup>th</sup> Street, Jacques Whitford Company, December 2000.
7. *Supplemental Soil Investigation Work Plan*, First Avenue Properties, New York, New York, TRC, February 2001.
8. *Interim Remedial Measures (IRM) Work Plan*, Parking Lot Property, 685 First Avenue, New York, New York, TRC, July 2001.
9. *IRM Work Plan Supplement 1*, Parking Lot Property, 685 First Avenue, New York, New York, TRC, October 18, 2001.
10. *Interim Remedial Measures (IRM) Work Plan Supplement 2*, Parking Lot Property, 685 First Avenue, New York, New York, TRC, October 21, 2001.
11. *Final Report for Interim Remedial Measures (IRM) Work Plans and Parking Lot Remediation Work Plan*, Parking Lot Property, 685 First Avenue, New York, New York, TRC, July 2002. (Approved November 14, 2002 (approval letter attached)).

## b. 700 First Avenue - Waterside Generating Station - VCP Site Number V-00-432-2

1. *Phase I Environmental Site Assessment*, Waterside Generating Station, 700 First Avenue Property, Foster Wheeler, January 2000.
2. *Phase II Environmental Site Assessment*, Waterside No. 1 & No. 2 Generating Stations and 708 First Avenue Properties, Foster Wheeler, March 2000.



Attachment H (cont'd)

3. *Supplemental Soil Investigation Work Plan*, First Avenue Properties, New York, New York, TRC, February 2001.
  4. *Draft Supplemental Soil Investigation Final Report and Remediation Work Plan*, Waterside Generating Station, 700 First Avenue, New York, New York, TRC, February 2003.
  5. *First Avenue Vaults Supplemental Investigation Addendum Final Report and IRM Work Plan*, Waterside Generating Station, 700 First Avenue, New York, New York, TRC, November 2003. (Approved June 5, 2002 (approval letter attached)).
- c. 708 First Avenue Office Building, VCP Site Number V-00-431-2
1. *Phase I Environmental Site Assessment*, 708 First Avenue Property, Foster Wheeler, December 1998.
  2. *Phase II Environmental Site Assessment*, Waterside No. 1 & No. 2 Generating Stations and 708 First Avenue Properties, Foster Wheeler, March 2000.
  3. *Supplemental Soil Investigation Work Plan*, First Avenue Properties, New York, New York, TRC, February 2001.
  4. *Supplemental Soil Investigation Final Report and Remediation Work Plan*, 708 Office Building Property, 708 First Avenue, New York, New York, TRC, June 2002.

2. OWNERS:

Present owner of the Site: Consolidated Edison Company of New York, Inc. formerly known as Edison Electric Illuminating Co. of New York, The New York Edison Company, Equitable Gas Light Company of New York and the New York Steam Corporation (by Certificate of Merger). As to a small portion of 700 First Avenue (Waterside): The City of New York pursuant to a 1,000-year lease with The Consolidated Edison Company of New York, Inc.

PREVIOUS OWNERS:

685 First Avenue (Parking Lot): United Parcel Service General and Longpat Corp. (each as to certain portions of the site)

Relationship to Co-Applicants: None

708 First Avenue (708 Office Building): Walter C. Cutting, sole qualified executor under The Last Will and Testament of Gertrude Cutting dated July 17, 1883

Relationship to Co-Applicants: None

700 First Avenue (Waterside): James Parker Dodd, The City of New York and New Amsterdam Gas Company (each as to certain portions of the site)

Relationship to Co-Applicants: None

Attachment H (cont'd)

3. OPERATORS:

Consolidated Edison Company of New York, Inc.  
4 Irving Place  
New York, New York 10003

Relationship to Co-Applicant:

TRC Companies, Inc. is the remediation contractor to under the VCO pursuant to the Exit Strategy® Contract between TRC Companies, Inc. and previous operator Consolidated Edison Company of New York, Inc.

East River Realty Company, LLC is the contract vendee and future developer of the Site.

# **Attachment I**

## **Contact List Information**

ATTACHMENT I

CONTACT LIST INFORMATION

1. THE CHIEF EXECUTIVE OFFICER AND ZONING BOARD CHAIRPERSON OF EACH COUNTY, CITY, TOWN AND VILLAGE IN WHICH THE SITE IS LOCATED.

- A. Chief Executive Officer  
Mayor Michael R. Bloomberg  
City Hall  
New York, New York 10007
- B. City of New York, Director of Zoning Department  
Michael Weil  
Department of City Planning  
22 Reade Street  
New York, New York 10007
- C. Manhattan Borough Office  
Vishaan Chakrabarti  
22 Reade Street, 6<sup>th</sup> Floor West  
New York, New York 10007-1216  
Tel: (212) 720-3480

2. RESIDENTS, OWNERS, AND OCCUPANTS OF THE SITE AND PROPERTIES ADJACENT TO THE SITE.

616 First Avenue: North is Manhattan Place apartment building (630 First Avenue); east is FDR Drive; south is Rivergate apartments (606 First Avenue); west is St. Vartan's Park.

3. LOCAL NEWS MEDIA FROM WHICH THE COMMUNITY TYPICALLY OBTAINS INFORMATION.

Newspapers: Daily News, New York Post, Our Town (c/o Manhattan Media)  
Television: NY1

4. THE PUBLIC WATER SUPPLIER WHICH SERVICES THE AREA IN WHICH THE SITE IS LOCATED.

New York City Department of Environmental Protection  
59-17 Junction Boulevard  
Corona, New York 11368

**Attachment I (cont'd)**

5. ANY PERSON WHO HAS REQUESTED TO BE PLACED ON THE SITE CONTACT LIST.

**DEPARTMENT OF PUBLIC SERVICE  
KEVIN LANG, ESQ.**

Three Empire State Plaza  
Albany, NY 12223-1350  
Phone: 518-473-1140  
Fax: 518-486-5710  
Email: [Kevin.Lang@dps.state.ny.us](mailto:Kevin.Lang@dps.state.ny.us)

**CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.**

4 Irving Place, Room 1815-S  
New York, NY 10003

**CHANOCH LUBLING, ESQ.**

Phone: 212-460-3302  
Fax: 212-677-5850  
Email: [LublingC@coned.com](mailto:LublingC@coned.com)

**CANDIDA L. CANIZIO, ESQ.**

Phone: 212-460-3188  
Fax: 212-260-8627  
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**MARY KRAYESKE, ESQ.**

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**ALAN M. BERMAN, ESQ.**

**LEBOEUF, LAMB, GREENE & MACRAE, L.L.P.**

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Attachment I (cont'd)

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**MARILYN B. SELIG**

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**DANIEL RIESEL, ESQ.**

**MICHAEL S. BOGIN, ESQ.**

**SIVE, PAGET & RIESEL, P.C.**

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Phone: 212-421-2150

Fax: 212-421-1891

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[mbogin@sprlaw.com](mailto:mbogin@sprlaw.com)

**TRC COMPANIES, INC.**

1200 Wall Street West, 2<sup>nd</sup> Floor

Lyndhurst, New Jersey, 07071

**EDWARD J. MALLEY**

**MICHAEL A. SKIRKA, CHMM**

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Fax: 201-933-5601

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[mskirka@trcsolutions.com](mailto:mskirka@trcsolutions.com)

**GAIL S. PORT ESQ.**

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Fax: 212-969-2900

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**GIL QUINONES**

**NEW YORK CITY ECONOMIC**

**DEVELOPMENT CORPORATION**

110 William Street, 4<sup>th</sup> Floor

New York, NY 10038

Phone: 212-312-3762

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**EDAN G. UNTERMAN  
EAST MIDTOWN COALITION FOR SENSIBLE DEVELOPMENT**

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New York, NY 10016

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Fax:

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**Attachment I (cont'd)**

**HON. C. VIRGINIA FIELDS  
MANHATTAN BOROUGH PRESIDENT**

Attn: Len Chong  
Director Land Use Housing and Development  
One Centre Street, 19<sup>th</sup> Fl. S.  
New York, NY 10008  
Phone: 212-669-8130  
Fax: 212-669-7862  
Email: [lghong@manhattanbp.org](mailto:lghong@manhattanbp.org)

**HON. EVA S. MOSKOWITZ  
COUNCIL MEMBER, 4<sup>TH</sup> DISTRICT**

Attn: Josh Karetny  
370 Lexington Avenue  
Suite 2001A  
New York, NY 10017  
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Email: [moskowitz@council.ny.cny.us](mailto:moskowitz@council.ny.cny.us)  
[j.karetny@inetmail.att.net](mailto:j.karetny@inetmail.att.net)

**HON. MARTIN CONNOR  
SENATOR, 25<sup>TH</sup> DISTRICT**

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**HON. THOMAS K. DUANE  
SENATOR, 27<sup>TH</sup> DISTRICT**

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**HON. RICHARD N. GOTTFRIED  
ASSEMBLYMAN, 64<sup>TH</sup> DISTRICT**

Attn: Michael Rabinowitz  
242 West 27<sup>th</sup> Street  
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Phone: 212-807-7900  
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Attachment I (cont'd)

**HON. JONATHAN BING**  
**ASSEMBLYMAN, 73<sup>RD</sup> DISTRICT**  
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New York, NY 10003  
Phone: 212-979-9696  
Fax: 212-979-0594  
Email: [sanders@assembly.state.ny.us](mailto:sanders@assembly.state.ny.us)

**OUR TOWN**  
63 West 38<sup>th</sup> Street, Suite 206  
New York, NY 10018  
Website: [www.manhattanmedia.com](http://www.manhattanmedia.com)

**HON. CAROLYN B. MALONEY**  
**CONGRESSWOMAN, 14<sup>TH</sup> DISTRICT**  
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Email: [Philip.craft@mail.house.gov](mailto:Philip.craft@mail.house.gov)

**DEPARTMENT OF CITY PLANNING**  
22 Reade Street, 4E  
New York, NY 10007-1216  
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**ENVIRONMENTAL ASSESSMENT & REVIEW**  
Phone: 212-720-3423  
Fax: 212-720-3495  
Email: [rdobrus@planning.nyc.gov](mailto:rdobrus@planning.nyc.gov)  
**BARRY DINERSTEIN**  
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Attachment I (cont'd)

**MANHATTAN COMMUNITY BOARD #6**

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**CHARLES BUCHWALD**

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Email: [cbuch@aya.yale.edu](mailto:cbuch@aya.yale.edu)

**LOU SEPERSKY, PRESIDENT  
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**Attachment I (cont'd)****GEORGE R. BROWN V, PRESIDENT  
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**GARY LITWIN  
STATE OF NEW YORK DEPARTMENT OF HEALTH**

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**MARY CLARE BERGIN, PRESIDENT  
SUTTON AREA COMMUNITY, INC.**

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**FRED ARCARO, PRESIDENT  
MANHATTAN EAST COMMUNITY ASSOCIATION**

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Attachment I (cont'd)

**DIVISION OF ENVIRONMENTAL REMEDIATION  
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL  
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625 Broadway  
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**MICHAEL LESSER**

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**HON. LIZ KRUEGER  
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**KAY S. XANTHAKOS**

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**ROBERT COZZY**

Division of Environmental Remediation  
New York State Department of Environmental Conservation  
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**Attachment I (cont'd)**

**JANE O'CONNELL**

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**KRISTA ANDERS**

State of New York Department of Health  
Flanigan Square, Room 300  
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**MARK LOWERY**

Chief Bureau of Public Out Reach  
Div. of Environmental Remediation  
New York State Department of Environmental Conservation  
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Albany, NY 12233-7016  
Phone: 518-402-8027  
Fax: 518-402-9036  
Email:

**THOMAS KUNKEL**, Regional Director  
NY State Dept. of Environmental Conservation  
1 Hunter's Point Plaza, 47-40 21<sup>st</sup> Street  
Long Island City, NY 11101-5407  
Phone: 718-482-4900  
Fax: 718-482-4954  
Email:

6. THE ADMINISTRATOR OF ANY SCHOOL OR DAY CARE FACILITY LOCATED ON OR NEAR THE SITE.

The following day care center is located near the site:

Pre-School Development  
400 East 34<sup>th</sup> Street  
New York, New York 10016

Attachment I (cont'd)

The following schools are located near the site:

1. P.S. 116  
Mary L. Murray School  
210 East 33<sup>rd</sup> Street  
New York, New York 10016  
Principal: Jane Hsu  
Tel: (212) 685-4366
2. Norman Thomas High School  
111 East 33<sup>rd</sup> Street  
New York, New York 10016  
Principal: Steven M. Satin  
Tel: (212) 576-0500
3. United Nations International School  
24-50 FDR Drive  
New York, New York 10010  
Director: Dr. Kenneth Wyre  
Tel: (212) 684-7400
4. The Family School  
323 East 4<sup>th</sup> Street  
New York, New York 10017  
Director: Lesley Nan Haberman  
Tel: (212) 688-5950
5. The Beekman School and Tutoring Center  
220 East 50<sup>th</sup> Street  
New York, New York 10022  
Headmaster: George Higgins  
Tel: (212) 755-6666

7. THE LOCATION OF A DOCUMENT REPOSITORY FOR THE PROJECT (E.G.,  
LOCAL LIBRARY)

Dan Walsh  
New York State Department of Environmental Conservation  
Region 2  
1 Hunter's Point Plaza  
47-40 21<sup>st</sup> Street  
Long Island City, New York 11101

New York Public Library  
Kips Bay Branch  
446 Third Avenue  
New York, New York 10016

## **Attachment J**

### **Contaminant Information**

**ATTACHMENT J****CONTAMINANT INFORMATION**

Please refer to the documents listed in Attachments G and H. These documents present the environmental contaminant information for each property comprising the Greater Waterside Site.

# **Attachment K**

## **Land Use Factors Question 13**



ATTACHMENT K

LAND USE FACTORS  
QUESTION 13

QUESTION: Describe the proximity to real property currently used for residential use, and to urban, commercial, industrial, agricultural and recreational areas.

ANSWER: The properties comprising the Greater Waterside Site are located at the edge of the densely-built urban area of Midtown Manhattan. The area around the Site contains residential, commercial, industrial and recreational areas.

Several residential neighborhoods are located in the area of the subject properties. Each of these neighborhoods contains a mixture of residential towers, smaller residential buildings, ground-floor retail uses, and smaller office buildings. Residential areas are to the north and south of the 685 First Avenue parcel. The Waterside parcel, on the other hand, has residential areas to the west and south. Finally, the 708 First Avenue parcel has residential areas immediately to the west.

In the immediate vicinity of the subject properties, there are a variety of commercial areas that tend to be neighborhood oriented – shops, restaurants and delis, and local commercial establishments and services.

One of the subject properties is the present location of the Consolidated Edison Company's Waterside electric generating facility, an industrial use. Other industrial or related infrastructure uses include a New York City Department of Environmental Protection ("NYCDEP") water maintenance facility directly south of the Waterside electric generating facility and two Consolidated Edison substations, one just south of the NYCDEP facility and one adjacent to the 685 First Avenue parcel.

There are several recreation spaces in the area of the subject properties: Robert Moses playground, located just north of the 708 First Avenue site between East 41<sup>st</sup> and 42<sup>nd</sup> Streets; a stretch of the East River Esplanade, from south of East 38<sup>th</sup> Street to East 40<sup>th</sup> Street (with a few interruptions); and St. Vartan's Park between East 35<sup>th</sup> Street and East 36<sup>th</sup> Streets, and First and Second Avenues. There are also several public plazas associated with residential buildings in the area.

## **Attachment L**

### **Land Use Factors Question 14**

ATTACHMENT L

LAND USE FACTORS  
QUESTION 14

QUESTION: Describe the potential vulnerability of groundwater to contamination that might migrate from the site, including proximity to wellhead protection and groundwater recharge areas.

ANSWER: The site investigations and NYSDEC comments to date have not indicated any issues at any of the properties comprising the Site with respect to contaminant migration that might adversely impact potential ground water receptors. There are no significant wellhead protection zones, ground water recharge areas or other sensitive receptors located within the geographic domain covered under the completed site investigations or the associated Remediation Work Plans.

In addition, the aforementioned NYSDEC-approved Remediation Work Plans address the required complete remediation of ground water contamination sources and monitoring of any related ground water contamination until NYSDEC grants approval for no further action.

## **Attachment M**

### **Land Use Factors Question 15**

**ATTACHMENT M**

**LAND USE FACTORS**  
**QUESTION 15**

QUESTION: Describe the geography and geology of the Site.

ANSWER: This information is contained in the NYSDEC-approved Remediation Work Plans for each property comprising the Site previously submitted under the Voluntary Cleanup Program. The site geography, regional geology/hydrogeology, and site-specific geology/hydrogeology are thoroughly described for each such property in Section 3.0 of the respective approved Remediation Work Plan for such property.